THE SPOLIATION OF THE PUBLIC LANDS.

THE Homestead Law of 1862 may justly be considered the most important legislative act since the formation of the Government. It constitutes at once an epoch in legislation and an enduring landmark of industrial and social progress. It was not borrowed from the code of any other people, but is distinctively and thoroughly American. No other single enactment has done so much to make our country honored and loved in all civilized lands, while it bears strong witness to the beneficent working of Democratic institutions. It is the outgrowth of the same causes that gave us cheap postage, the extension of the suffrage, the abolition of slavery, and the struggle of the working classes for their rights. Of course, this measure was not the work of a day. It was a gradual development during a period of more than three-quarters of a century, and its successive stages cannot fail to interest the student of American politics.

Our land-policy, in the beginning, was devised "for revenue only." The great debt incurred in the struggle for independence had to be provided for, and as the lands committed to the charge of the general Government through cessions of individual States were of almost illimitable extent, and there was then no system of Federal duties on imports, Congress was obliged to look to the public domain as the only available means of financial relief. This necessitated sales in very large tracts to wealthy capitalists and corporations, and thus powerfully stimulated the evils of speculation and monopoly. Hundreds of thousands of acres were sold in a body at a very low rate, and the purchaser, of course, disposed of it according to his sovereign pleasure. These evils were the price the country was compelled to pay for its endeavor to keep faith with its creditors and provide the means for carrying on the Government. As a factor in this finan-

cial problem, the "settler," who in later years has been so formidable a figure in our politics, was unknown, save as an intruder and trespasser, who was warned off the public lands. Their occupancy was forbidden by proclamation of Congress as early as 1785. This policy was reaffirmed in 1804; and by act of Congress of March 3, 1807, it was provided that the Marshal of the Territory might remove settlers from the public lands, with the aid of any required military force, and that they should be liable to a fine of one hundred dollars, and imprisonment not longer than six months. This harsh legislation, however, was not very strictly enforced. It seemed exceedingly ungracious to the poor pioneer, who was willing to face the wild beasts of the wildnerness and the scalping-knife of the Indian, in the struggle to secure a home on the frontier.

The right of preëmption on the public domain, which means the right of a settler thereon to purchase in preference to others, rested on an obvious sense of justice and the necessities of the settler, and was first partially recognized by Congress in the act of March 3, 1801, affecting settlers on the Symmes Purchase, northwest of the Ohio. This was followed by numerous other acts, extending over a period of forty years, applying to particular States and Territories, and providing for preëmption rights in particular cases and on special conditions. The most important of these was the act of May 29, 1830, granting to every settler in possession at the date of the law, who had cultivated any portion of the land, one hundred and sixty acres. This act was limited to one year; but by various subsequent acts, reaching to June 1, 1840, preëmption privileges were extended to a later date and a larger class of persons. The Government thus presented the anomaly of conferring the exclusive right to preëmpt its lands upon those who had violated the laws of the United States by their occupancy; and this legislative irony only gave renewed strength to the current in favor of settlers. The revenue feature of our land policy had outlasted the reasons that excused it. The receipts of the Government from cash sales of land from 1830 to 1840 were nearly eighty-two million dollars, thus swelling the redundant and demoralizing surplus over which Congress wrangled for so many years, while a very large portion of the lands sold fell into the hands of non-resident speculators, and were thus placed beyond the reach of the settler. It was estimated that in 1835 alone eight million acres

were thus appropriated, and it became more and more evident that a new policy had become absolutely indispensable. At last, on September 4, 1841, our general Preëmption Act became a law, superseding all previous enactments on the subject, which had been retrospective in their bearing, and definitely providing for the right of preëmption as to all future settlers on the public domain. Our land-policy, which had been on trial for fifty-six years, was thus completely revolutionized. The settler was no longer a trespasser, to be visited with penalties, but was invited by the Government itself to make his settlement, and was offered a home on prescribed conditions as to occupancy, improvement, notice of intention, and payment; and its faith was understood to be plighted that he should be protected at every stage of the proceedings, and should receive a patent for his land upon their completion. Not revenue merely, but the establishment and multiplication of homes for the people, now became the clearly defined policy of the Government; and it seems utterly incredible that this policy could have been so long delayed by a nation that had put away primogeniture and entails, and laid its foundation in the equality and sacredness of individual rights.

But our land-policy was not, in all its features, a finality. The forces that had compelled the enactment of the preëmption law were not exhausted. A great point had been gained, but it was provisional only. Settlers were still obliged to pay a dollar and a quarter an acre for their lands, and this was felt to be a great hardship. It was a tax of so much money for the privilege of cultivating the earth. It was a tax upon the liberty to carve out a home in the wilderness and make it tributary to the national wealth. President Jackson, as early as 1832, had commended the policy of making the public domain, in limited quantities, practically free to settlers, and although it then awakened no general response, it took root in the popular heart, and had steadily multiplied its adherents. It belonged to the logic of our politics, and its triumph was simply a question of time. Owing to favoring conditions, its stronghold, at first, was in the State of New York. The memorable Anti-rent movement began to take shape there in 1839, and continued for seven or eight years, disturbing the peace of a considerable group of counties, violently agitating the politics of the State, and involving some tragical consequences. The struggle, it will be remembered, grew out of the refusal of the tenants of the Van Rensselaer grant from

the old Dutch Government to comply with the feudal exactions of their landlords; and the leader of the Anti-renters was Thomas Ainge Devyr, who had recently come from Ireland, and had just published a remarkable pamphlet on the land question, entitled "Our Natural Rights." It was a work of real power, written in vigorous English, and it anticipated, by nearly half a century, the boldest utterances that have stirred the public mind on both sides of the Atlantic within the past few years. Mr. Devyr edited "The Anti-Renter," and having found, to his amazement, that the curse of landlordism, which he had fought in his native country, was rapidly intrenching itself in America, he entered the lists against it with fervor and single-mindedness. He went among the farmers of the Anti-rent districts, and while breathing into them his spirit and organizing them for action, he espoused, with equal zeal, the policy of dedicating our public domain to landless men, in limited homesteads, instead of surrendering it to the greed of capitalists.

Equally sincere, and not less thoroughly devoted to the work of reform, was George Henry Evans, a native of England, who in the spring of 1844 began the publication in New York of a tri-weekly journal called "The Peoples' Rights," and of a weekly called "The Workingman's Journal." In these publications he advocated the freedom of the public lands to actual settlers, in allotments not exceeding one hundred and sixty acres. He had embraced this idea years before, and although others may have espoused it earlier, he is justly entitled to take rank as its first conspicuous champion and real pioneer. A bound volume of "The Workingman's Journal," which was published only one year, is before me, and I find it ably edited and filled with valuable matter. It was the organ of "the National Reform Association," which did excellent service in the publication and distribution of pamphlets and tracts on the land question, many of which, as I well remember, were scattered throughout the West and eagerly read. Its name was afterward changed to "The Land Reform Association," which still exists. "The Workingman's Journal" was followed by another weekly, called "Young America," in which Mr. Evans advocated land-limitation, homestead-exemption, and the Ten-Hour Law. The paper was discontinued in March, 1846, but the agitation of the subject went on. On the cardinal question of making the public lands free to actual settlers, he had made an enduring impression upon the

public mind, while his power over his early disciples seems to have been a fascination. Several of them still survive, and they cherish his memory with a tenderness and reverence that bear witness to the genuineness of the man. Other journals specially devoted to this idea were from time to time established in different States, and it had among its supporters such men as Horace Greeley, Parke Godwin, Samuel J. Tilden, William Henry Channing, Cassius M. Clay, Charles A. Dana, William Leggett, Arnold Buffum, Marcus Morton, Wendell Phillips, Gerrit Smith, Theodore Parker, and William Lloyd Garrison. The Brook-Farm experiment was then in progress, and its leading spirits, of course, favored the idea. It had been denounced by politicians and newspapers of both the old parties as communisim and socialism, and its advocates abundantly ridiculed as the "vote-yourself-a-farm party"; but it held its ground, and constantly added to its disciples. It found favor with the "Barnburners" of New York, and it was incorporated into the platform of the Free Democracy by its national convention at Buffalo, August 8, 1848. Henceforward it was both a political and a national issue, which could not be ignored.

It was not, however, destined to as speedy a triumph as its sanguine friends anticipated. It now had to run the gauntlet of party politics and Congressional hostility, and as early as December 12, 1848, Horace Greeley, who held a seat for a brief time in the House of Representatives of the Thirtieth Congress, introduced a bill giving to landless settlers the right to preëmpt one hundred and sixty acres for seven years, and, on condition of occupancy and improvement, the "right of unlimited occupancy" to forty acres of the same, without price, by a single man, or eighty acres by the married head of a family. This exceedingly moderate proposition was laughed at and summarily laid on the table; but early in the first session of the Thirty-first Congress, the Homestead Act, substantially as we now have it, was introduced in both houses. Various propositions were offered. The first in order of time was that of Senator Douglas, on December 24, 1849, granting one hundred and sixty acres to actual settlers, on condition of occupancy and cultivation for four years. His earnestness in this movement is very debatable, since it was not followed by any effort on his part to secure the passage of the measure, while he struggled with tireless zeal for his bill making a large grant of lands in aid of the Illinois Central Railway. Mr. Webster, on January 22, 1850, offered a reso-

lution favoring a similar proposition, but requiring only three years' occupancy and cultivation by the settler, and making the land inalienable except by devise by will. On January 30, Gen. Houston offered a resolution of the same purport, while Mr. Seward was earnest and outspoken in favor of the new policy. Mr. Walker, of Wisconsin, was also its zealous supporter, but his plan required the public lands to be first given to the States, in trust for actual settlers. A very lively interest in the policy had thus evidently been awakened, but as yet it had little support in the Senate. In the House, Timothy R. Young, of Illinois, introduced a bill on February 4, similar to that of Mr. Douglas, which was referred to the Committee on Public Lands; and on February 27, Andrew Johnson introduced another bill, requiring an occupancy and cultivation for the period of five years, as a condition of title. This also was referred to the Committee on Public Lands; but as that committee proved unfriendly to the measure, the same bill was again introduced by Mr. Johnson on the 4th of June following, and referred to the Committee on Agriculture, which reported it favorably on July 25. It was debated at different times, but the only men who championed the measure and supported it in carefully prepared speeches were Andrew Johnson and myself; and although I do not believe it had a dozen outspoken friends in the House, and the discussion of it was manifestly very distasteful, there was a determined purpose not to allow a direct vote upon it to be taken. This is shown by the record. The motion to lay the bill on the table, on January 28, 1850, was lost by yeas 78, nays 90; but the motion to refer it to the committee of the whole, on the same day, which was practically equivalent, was carried by yeas 121, nays 64. When the motion was afterward made to reconsider the last vote, on February 28, 1851, and it was moved to lay that motion on the table, which of course would kill the bill, its friends had not even strength enough to secure the yeas and nays, while on the vote by tellers, which committed nobody, the motion prevailed by yeas 92, nays 54. The only sign of promise in these proceedings was the fact that the House was afraid to place itself squarely on the record.

The principal opposition to the measure, however, came from the South. The new policy had made its appearance in the Northern States in connection with the anti-slavery agitation, and it was in fact its natural ally. In recognizing the dignity of labor and the equal rights of the million, it recognized the right of the

laborer to own himself, and was an implied threat against the life of the oligarchy that stood in its way. The slave-holders understood this perfectly, and they hated the "agrarian project" almost as much as they hated Abolitionism itself. This was clearly revealed in the Thirty-first Congress, in the concerted efforts of Speaker Cobb and his Southern friends to suppress all debate upon the measure and prevent a vote. It was made still more evident in the Thirty-second Congress, in the vote finally obtained on Mr. Johnson's bill, on May 12, 1852. The yeas were 107, nays 56; the strong preponderance of the affirmative vote being from the free States, and of the negative from the South. The bill was reported adversely in the Senate, and no further action was taken. Substantially the same bill was reported by Mr. Dawson, of Pennsylvania, in the Thirty-third Congress, from the Committee on Agriculture, and passed the House on March 6, 1854, by yeas 107, nays 72. An analysis of the vote discloses the same sectional character of the division. In the Senate, the bill was loaded down with amendments that completely destroyed its character. It was introduced in the House in the Thirty-fourth Congress by Mr. Grow, of Pennsylvania, and on August 4, 1856, on his motion to suspend the rules in order to take it up, the yeas were 105, nays 62; all the negative votes save fifteen being from the South, and all the affirmative but nine from the free States. No action was taken in the Senate in any form. In the Thirty-fifth Congress, Mr. Grow again introduced the bill, but no vote was reached. It was introduced in the Senate by Andrew Johnson, but no action was taken except upon a motion to postpone, which was carried. In the Thirty-sixth Congress it was again introduced in the House by Mr. Grow, and on February 1, 1859, it passed that body by yeas 120, nays 76; all the affirmative votes save three being from the free States, and all the negative but six from the slave States. In the Senate, the consideration of the bill was defeated by motions to postpone, and the vote showed the same sectional character as in the House. At the next session of this Congress, the same bill was reported by Mr. Lovejoy, and on March 12, 1860, it passed the House by yeas 115, nays 65; the affirmative vote being all from the free States save one, and all the negative vote save one from the South. In the Senate, Mr. Johnson offered a substitute for the bill on April 17, which was adopted and afterward amended by the House and agreed to by both houses through the action of a

committee of conference. It met with an elaborate veto from President Buchanan, who feared it would "introduce among us those pernicious social theories which have proved so disastrous in other countries." It failed to receive the two-thirds vote required to make it a law.

In the Thirty-seventh Congress, the bill was introduced by Mr. Aldrich, and reported from the Committee on Agriculture by Mr. Lovejoy; and on February 28, 1862, it passed the House by yeas 107, nays 16; all the affirmative votes but one being from the free States, and all the negative but five from the South. In the Senate, the bill, with sundry amendments, was passed on the 6th of May following, by yeas 33, nays 7; there being only one affirmative vote from the South, and one negative from the free States, while the smallness of the negative vote in both houses was caused by the withdrawal of Southern members to engage in the work of disunion. The House disagreed to the amendments of the Senate, but the disagreement was adjusted by a conference committee, and the bill was approved by President Lincoln, on May 20. It will thus be seen that, from the first agitation of the homestead policy till its triumph, its popularity in the Northern States kept pace with the growth of anti-slavery opinion, while the hostility of the South increased in the same measure; and that the good work was speeded, at last, by the madness that accomplished the destruction of slavery in the desperate struggle to save it.

This brief history of the Homestead Law strikingly illustrates the halting and left-handed progress of legislative reforms. The great financial exigency that dictated our early policy completely subordinated the settlement and tillage of the public domain to the idea of revenue. This idea so fastened itself upon the general mind that the problem of our land-policy was never considered upon its merits, while the mischiefs of monopoly were allowed free course. The remarkable result was, that the preëmption law had to struggle for its existence more than half a century. Its final enactment was a great victory for the settler; but his right to the unhindered choice of his quarter-section in any portion of the public domain that was placed upon the market was not less important than the right of preëmption itself. The land speculator was licensed by Congress to prey upon the public domain by appropriating to his own use great bodies of choice land, thus throwing himself across the path of the settler, and forcing him still farther into the fron-

tier and on to less desirable lands, while obstructing the population and development of the country. This partnership between the Government and the speculator in the business of crippling the settler and retarding the increase of national wealth was as stupid in fact as it was indefensible in principle. It was a crusade against the rights of coming generations, and had become a deadly blight upon our Western States and Territories when the Preëmption Law was enacted. As the Federal Treasury was then full to overflowing, there was nothing to excuse its continuance. It was the mere wantonness of legislative profligacy ; and the simple and obvious remedy was an enactment that agricultural lands should be acquired under the provisions of the Preëmption Law, and not otherwise. This would have cut up speculation by the roots, and given us a reform in our policy that would at once have been savingly felt in every pulse of the national life. It would have been an act for the creation of wealth by checking monopoly, stimulating settlement, and multiplying the cultivators of the soil. But this was not done. Congress slept over its opportunity, and the work of organized plunder had its way. The speculator was in the day of his glory, while the Government still exacted from the settler its price for his preëmption. At the end of a struggle of twenty-one years, Congress enacted the Homestead Law, through which he secured another great advantage ; but his right to a home free of cost was of less consequence than the reservation of the public domain for his exclusive use. The work of spoliation still went on as before. A vigorous effort was made in the House of Representatives by a western member to prevent these evils by an amendment of the Homestead Law, and was persisted in for years, but it did not prevail. The Southern Homestead Law of June 21, 1866, applying to the five land States of the South, dedicated to actual settlement every acre of the public lands remaining unsold within their borders ; but this model enactment was repealed a few years later, in the interest of monopolists. In the mean while, the Preëmption Law, with its unfriendly tariff upon the privilege of settlement, had been made an absolutely superfluous machinery by the Homestead Law. It had played its part and served its turn. All that was good in it was saved in the latter enactment, and the country did not need two separate methods of acquiring titles to the same class of lands, which would confuse rather than simplify our policy. But the Preëmption Act was allowed

to stand, and is still in force. For years it has been so cunningly employed in furthering the game of land-jobbers, that its repeal has been demanded for the very reasons that were originally urged in favor of its passage. Through the sharpened faculties of modern roguery it has become an engine of wholesale plunder and fraud, and an open defiance of the policy of actual settlement. Under color of its provisions, and through fictitious entries, great stretches of the public lands have been made the spoil of ravenous land-sharks, as we have seen in the Territory of New Mexico, while the Homestead Act itself can only be guarded against similar abuses by an amendment requiring proof of actual residence and improvement during a period of at least two years before an entry may be commuted.

Equally indefensible was the action of Congress in another direction. Simultaneously with the passage of the Homestead Law, and as if intending to thwart its provisions, Congress inaugurated our system of extravagant and unguarded land-grants in aid of railways, covering over two hundred million acres. It is true there were strong excuses for this legislation. The need of great highways to the Pacific was then considered imperative, and unattainable without very liberal grants of the public lands. The value of the lands granted was not understood as it is to-day. Moreover, the nation was then engaged in a struggle for its life, or in the settlement of the great problems that followed, and was thus exposed to the dangers of hasty legislation. These are extenuating facts; but the mischiefs of this legislation are none the less to be deplored. They are not, however, so much the result of the grants themselves as the failure of Congress to declare them forfeited after inexcusable non-compliance with their conditions. This failure is equivalent to re-granting the lands. More than one hundred million acres are to-day locked up by these unearned grants, and Congress, in refusing to declare them forfeited and to open the lands to settlement, has been far more recreant to the homestead policy than in making the grants in the beginning.

Nor has the Homestead Law fared any better in still later acts of Congress, which deserve mention in this connection. The practical operation of our Timber-Culture laws has been particularly unfortunate. Their purpose has been almost wholly defeated, and their repeal is demanded both in the interest of the Homestead Law and the growth of timber. Kindred observations apply to

our laws respecting desert lands. They are systematically evaded and perverted, and to this extent the spirit and aim of the Homestead Law are defeated. Our Timber and Stone Land Act should be repealed for the same reasons. All this legislation has been turned to the account of "land rings," instead of promoting the settlement of the country. In short, the promise of the Homestead Law, as understood by the people in the beginning, has not been kept. Congress has played a game of fast-and-loose since its enactment, as it had done before, while the Land Department of the Government for the past thirty odd years has been far less faithful to the people than to our great railways, as I have shown in a paper in this REVIEW for March, 1883. Our vicious land-policy is the result, and it has not been a mistake merely, but a great national misfortune. Its evils may be palliated, but cannot be undone. It already has its enduring monument in the very curses it has planted in its footsteps and written down in the soil; while the remnant of the public domain yet under the control of Congress can only be saved by so amending the Homestead Law that the whole of it, except mineral lands and timber lands that may be needed for future use, shall be disposed of exclusively under its provisions. This would make our land-policy, at last, the survival of the fittest, instead of leaving it fatally marred by the clumsy processes through which it has been evolved.

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